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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ROBERT EARLE JOHNSON,

12 Plaintiff,

13 v.

14 CHRISTINE O. GREGOIRE, *et al*,

15 Defendants.
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Case No. C08-5428FDB-KLS

ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL
DEFENDANTS TO PAY COST
FOR FAILURE TO WAIVE
SERVICE

22 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
23 636(b)(1), Local Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure. The case is
24 before the Court on plaintiff's filing of a motion to compel defendants to pay the cost for failure to waive
25 service of the summons and complaints and failure to timely return signed waivers or acknowledgment of
26 waivers. (Dkt. #14). After reviewing plaintiff's motion, defendants' response thereto and the balance of
27 the record, the Court finds and orders as follows:

28 On July 24, 2008, the Court directed the United States Marshal to serve defendants with copies of

1 the summons and complaint in this matter. (Dkt. #9). In his motion to compel, which he filed on August
2 28, 2008, plaintiff asserts that neither “defendants nor any attorney of record has entered a ‘Notice of
3 Appearance’ waiving service.” (Dkt. #14, p. 2). Plaintiff further asserts defendants are intentionally
4 delaying the proceedings in this matter, should be required to pay the costs incurred by the United States
5 Marshal in effecting service, and the Court should order defendants to answer the complaint within 30
6 days of August 25, 2008. The Court disagrees.

7 First, as noted by defendants in their response – to which plaintiff has not filed any reply – prior to
8 the filing of plaintiff’s motion, defendants Gregoire, Van Boening, Dye, and Montgomery each had
9 signed and returned their waivers. See (Dkt. #11, 18-19, 23). Second, it appears, also as noted by
10 defendants, that defendants Johnson, Ngete, Naranjo, and Hostetler never received their waivers, as
11 service on each of these defendants was returned unexecuted. See (Dkt. #13-16). Nevertheless, through
12 their counsel, these four defendants now have all waived service of process and acknowledge the Court’s
13 personal jurisdiction over them for purposes of this action. (Dkt. #25, p. 2).

14 That leaves defendant Ceden. It seems that an attempt was made to serve defendant Ceden with
15 the summons and complaint at the Department of Corrections (“DOC”), but that those documents were
16 returned by the DOC to the Clerk, because defendant Ceden is no longer an employee of the DOC. (Dkt.
17 #10). Defendant Ceden thus also cannot be faulted for not having returned his waiver, because he never
18 received it. Accordingly, for all of the above reasons, plaintiff’s motion to compel defendants to pay the
19 costs of service (Dkt. #24) hereby is DENIED.

20 As to plaintiff’s request that defendants be ordered to answer his complaint within 30 days of
21 August 25, 2008, as pointed out by defendants, that is approximately the date by which an answer would
22 otherwise be due. As such, the Court also declines to order defendants to file their answer within the time
23 being requested here, as defendants essentially are required to do so anyway. In addition, the DOC has
24 informed the Clerk that defendant Ceden may be contacted at the following address: 3074 – 50th Ct. SE,
25 Lacey, WA 98503. (Dkt. #10). Accordingly, plaintiff shall provide the Court with a properly completed
26 form for service and copy of the complaint by **no later than October 23, 2008**, so that service by mail by
27 the United States Marshal may be attempted on defendant Ceden at that address. **Plaintiff is warned**
28 **that failure to provide the Court with the service form and copy of the complaint by that date may**
result in dismissal of defendant Ceden from this matter.

1 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants.

2 DATED this 23rd day of September, 2008.

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6 Karen L. Strombom
7 United States Magistrate Judge
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